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09/810,891	03/16/2001	Louis H. Borders	WVANP011	6686

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EXAMINER

BOYCE, ANDRE D

ART UNIT PAPER NUMBER

3623

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/810,891

Applicant(s)

BORDERS ET AL.

Examiner

Andre Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,7-11,21,24,25 and 27-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-11,21,24,25 and 27-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 1, 2006 has been entered.
2. Claims 1, 7, 9-11, 21, and 24 have been amended. Claims 3-6, 22, 23, and 26 have been canceled. Claims 27-36 have been added. Claims 1, 2, 7-11, 21, 24, 25, and 27-36 are pending.

### ***Claim Objections***

3. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 10 fails to further limit claim 9, since the claims are functionally identical, although the verbiage varies slightly.

***Priority***

4. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. [1] as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 09/568,613, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. Specifically, the application fails to provide support for independent claims 1 and 36, including, inter alia, dividing and assigning the plurality of customers into at least two customer groups, each customer group corresponding to a range of customer values.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 1, 2, 7-11, 21, 24, 25, 27-34, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Florence (US 2002/0007299), in view of Chen et al (USPN 6,741,995), in further view of Dietrich et al (USPN 6,526,392).

As per claim 1, Florence discloses a method for scheduling delivery of products (i.e., internet grocery delivery service, ¶ 0030), comprising: receiving a piece of information regarding a customer (i.e., purchaser indicates a general time frame for delivery, ¶ 0036), displaying a plurality of available delivery windows to the customer based on the piece of information regarding the customer (¶ 0036), receiving from the customer a selection of a delivery window from the plurality of available delivery windows to fulfill an order for the customer (¶ 0037), and identifying a route from a plurality of routes to deliver the order based on the selected delivery window (i.e., routing engine determines the optimum route, ¶ 0051).

Florence does not explicitly disclose associating a customer value with each of a plurality of customers, based on information in customer order data, and dividing and assigning the plurality of customers into at least two customer groups, each customer group corresponding to a range of customer values. Chen et al disclose associating a customer value with each of a plurality of customers (i.e., segmentation of the customers based upon certain attributes, including customers by percentile to a particular segment code, column 3, lines 53-58 and table 2), based on information in customer order data (i.e., retailing and electronic commerce, column 3, lines 45-46); and dividing and assigning the plurality of customers into at least two customer groups, each customer group corresponding to a range of

customer values (i.e., segmentation of customers in to a plurality of groups based upon certain attributes, column 3, lines 53-58).

Neither Florence nor Chen et al explicitly disclose determining an actual capacity allocation distribution among the plurality of customer groups based on information in the customer order data so as to adjust at least the range of customer point values associated with one customer group, wherein at least one of the windows available for the customer to select depends on the customer group to which the customer is assigned and the adjusted range of customer values.

Dietrich et al disclose the use of customer and baseline profiles with a service network model (column 2, lines 42-44), including shipment of goods to a customer (column 3, lines 32-35), wherein the data is analyzed to create customer profiles describing customer service activity and evaluate the incremental cost and resource allocation (i.e., range) of adding new customer to the service network (column 3, lines 57-67), in order to determine the correct price range (i.e., target allocation, column 4, lines 1-3). Further, Dietrich discloses wherein the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values (i.e., a suitable shipping profile presented to the customer, based upon customer data, column 7, lines 7-24).

Florence and Dietrich et al are both concerned with effective service delivery, while Florence, Dietrich et al, and Chen et al are concerned with effectively segmenting customers, therefore it would have been obvious to one having ordinary

skill in the art at the time the invention was made to include associating a customer value with each of a plurality of customers, based on information in customer order data, and dividing and assigning the plurality of customers into at least two customer groups and determining an actual capacity allocation distribution among the plurality of customer groups based on information in the customer order data so as to adjust at least the range of customer point values associated with one customer group, wherein at least one of the windows available for the customer to select depends on the customer group in Florence, as seen in Chen et al and Dietrich et al, respectively, thus efficiently determining the delivery window availability for a customer based upon the customer profile, making Florence system more robust.

As per claim 2, Florence does not explicitly disclose a new customer group corresponding to those of the plurality of customers associated with the system less than a predetermined period of time. Chen et al discloses a new customer group corresponding to those of the plurality of customers associated with the system less than a predetermined period of time (i.e., segmentation based upon the recency (R) of the customer profile, wherein a new customer would have low R value based upon a particular time, column 5, lines 30-32). Florence and Chen et al are concerned with effectively segmenting customers, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a new customer group corresponding to those of the plurality of customers associated with the system less than a predetermined period of time in Florence, as

seen in Chen et al, thus efficiently determining the delivery window availability for a customer based upon the customer profile, making Florence system more robust.

As per claim 7, Florence does not disclose associating a customer group override with selected ones of the plurality of customers. Chen discloses associating a customer group override with selected ones of the plurality of customers (i.e., specifying a customer group as an expression, wherein the expressions are used to evaluate the group, regardless of numeric value, thus allowing the user to override the values, column 8, lines 51-56). Neither Florence nor Chen et al disclose allowing a delivery window to be available for the selected ones of the plurality of customers being done with reference to the customer group override. Dietrich discloses wherein the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values (i.e., a suitable shipping profile presented to the customer, based upon customer data, column 7, lines 7-24). Florence, Dietrich et al, and Chen et al are concerned with effectively segmenting customers, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include associating a customer group override with selected ones of the plurality of customers and allowing a delivery window to be available for the selected ones of the plurality of customers being done with reference to the customer group override in Florence, as seen in Chen et al and Dietrich et al, respectively, thus efficiently determining the delivery window



availability for a customer based upon the customer profile, making Florence system more robust.

As per claim 8, Florence discloses information in the customer order data for each customer comprise at least one of customer order size (i.e., nature of the items to be delivered, ¶ 0047) and customer order frequency.

As per claims 9 and 10, Florence does not disclose the range of customer values associated with selected customer groups is adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution. Chen et al discloses wherein the range of customer values associated with selected customer groups is adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution (i.e., segmenting of customers into one or more groups, based upon customer profiles, wherein the customer profiles are analyzed by a product planner to determine whether to enter or divest a line of business, column 8, lines 12-25). Florence and Chen et al are concerned with effectively segmenting customers, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the range of customer values associated with selected customer groups is adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution in Florence, as seen in Chen et al, thus efficiently determining the delivery window availability for a customer based upon the customer profile, making Florence system more robust.

As per claims 11, Florence does not disclose the range of customer values associated with selected customer groups is adjusted manually to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution. Chen et al discloses the range of customer values associated with selected customer groups is adjusted manually to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution (i.e., segmenting of customers into one or more groups, based upon customer profiles, wherein the customer profiles are analyzed by a product planner to determine whether to enter or divest a line of business, column 8, lines 12-25). Florence and Chen et al are concerned with effectively segmenting customers, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the range of customer values associated with selected customer groups is adjusted manually to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution in Florence, as seen in Chen et al, thus efficiently determining the delivery window availability for a customer based upon the customer profile, making Florence system more robust.

As per claim 21, Florence discloses the plurality of delivery windows are transmitted to a remote platform via a wide area network for presentation to the customer (i.e., computer networks 30, ¶ 0031), and wherein the method further comprises determining which of the plurality of windows are available for delivery of the order with reference to currently available system resources (i.e., available capacity of assigned delivery trucks, ¶ 0047).

As per claim 24, Florence does not disclose the customer is associated with a group name and a customer group override. Chen et al disclose the customer is associated with a group name and a customer group override (i.e., specifying a customer group as an expression, wherein the expressions are used to evaluate the group, regardless of numeric value, thus allowing the user to override the values, column 8, lines 51-56). Neither Florence nor Chen et al disclose at least one of the windows that the customer can select for delivery is determined based on which of the group name and the customer group override is dominant. Dietrich discloses wherein the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values (i.e., a suitable shipping profile presented to the customer, based upon customer data, column 7, lines 7-24). Florence, Dietrich et al, and Chen et al are concerned with effectively segmenting customers, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the customer is associated with a group name and a customer group override and at least one of the windows that the customer can select for delivery is determined based on which of the group name and the customer group override is dominant in Florence, as seen in Chen et al and Dietrich et al, respectively, thus efficiently determining the delivery window availability for a customer based upon the customer profile, making Florence system more robust.

As per claim 25, Florence does not disclose the customer group override is associated with an override expiration date, after which the group name dominates

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the customer group override. Chen et al disclose the customer group override is associated with an override expiration date, after which the group name dominates the customer group override (i.e., specifying a customer group as an expression, wherein the expressions are used to evaluate the group, regardless of numeric value, thus allowing the user to override the values, column 8, lines 51-56).

Florence and Chen et al are concerned with effectively segmenting customers, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the customer group override is associated with an override expiration date, after which the group name dominates the customer group override in Florence, as seen in Chen et al, thus efficiently determining the delivery window availability for a customer based upon the customer profile, making Florence system more robust.

As per claim 27, Florence discloses identifying of the route favors a route that already has at least one previously scheduled stop to fulfill another customer order over another route that does not have any previously scheduled stop (i.e., determination of most cost efficient and customer friendly route, including preferred route duration, ¶ 0051).

As per claim 28, Florence discloses considering space on a transportation vehicle to deliver products to the customer based on the customer order in view of at least one other order to be serviced by the transportation vehicle for the identified route (i.e., equipment capacity, ¶ 0051).

As per claim 29, Florence discloses determining if there is enough time to deliver the order without violating an existing promise to another customer on the identified route (consideration of the available capacity of assigned delivery vehicles, ¶ 0047).

As per claim 30, Florence discloses providing an indication that a transportation vehicle will be in the customer's neighborhood (i.e., scheduling engine determines and displays available time windows, thereby inherently indicating that the delivery vehicle will be in the customer's neighborhood, ¶ 0036).

As per claim 31, Florence discloses avoiding driving long distances to deliver just the order of the customer (i.e., maximum route duration and location, ¶ 0051).

As per claim 32, Florence discloses determining the ratio of driving time to the available time to deliver the order for the identified route (i.e., 4:3 ratio has been found to even out deliveries, ¶ 0041).

As per claim 33, Florence discloses displaying a window for the customer although the window should not be available to the customer group in which the customer is assigned, if the window is still available to another customer group after a certain predetermined period of time has elapsed (i.e., all windows are made available to recipients until a maximum number of orders is reached, ¶ 0049).

As per claim 34, Florence discloses keeping track of the current state of all delivery windows (i.e., scheduling engine determines which windows are available, ¶ 0047).

Claim 36 is rejected based upon the same rationale as claim 1, since it contains the same limitations, therein.

7. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Florence (US 2002/0007299), in view of Chen et al (USPN 6,741,995), in further view of Dietrich et al (USPN 6,526,392), in further view of Parkinson (USPN 6,990,460).

As per claim 35, neither Florence, Chen et al, nor Dietrich et al disclose providing a message to the customer that the customer's status could be improved if the customer orders more than a certain dollar amount by a certain time. Parkinson discloses an incentive indicator 305 associated with the delivery slot, wherein any customer who selects the delivery slot associated therewith is offered the indicated incentive (column 4, lines 7-12). Both Florence and Parkinson are concerned with effective delivery, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a message to the customer that the customer's status could be improved in Florence, as seen in Parkinson, as an effective means of balancing customer segmentation and delivery slots, making Florence system more robust.

### ***Response to Arguments***

8. In the Remarks, Applicant asserts that the Final office action and the Advisory action contradict each other. The Examiner respectfully disagrees and submits that the Advisory action simply reiterates the rejections and arguments seen in the Final office action. Applicant seems to have either misunderstood or misconstrued statements in the Advisory action, and then asserts that they're contradictory to the

Final office action. The position taken in both the Final office action and the Advisory are the same.

Applicant also argues that neither Chen et al nor Dietrich et al disclose associating a customer value with each of a plurality of customers, based on information in customer order data, and dividing and assigning the plurality of customers into at least two customer groups, each customer group corresponding to a range of customer values and determining an actual capacity allocation distribution among the plurality of customer groups based on information in the customer order data so as to adjust at least the range of customer point values associated with one customer group. The Examiner respectfully disagrees. First, it is noted that "Dietrich et al discloses suitable shipping profile presented to the customer, based upon customer data (column 7, lines 7-24), while Chen et al disclose including a plurality of expressions for segmenting customers (column 4, lines 37-41)," as seen in the Final rejection, was simply a statement to provide motivation to combine the references, not to teach the limitations, as Applicant seems to assert. As seen above and in the Final rejection, Chen et al disclose associating a customer value with each of a plurality of customers (i.e., segmentation of the customers based upon certain attributes, including customers by percentile to a particular segment code, column 3, lines 53-58 and table 2), based on information in customer order data (i.e., retailing and electronic commerce, column 3, lines 45-46); and dividing and assigning the plurality of customers into at least two customer groups, each customer group corresponding to a range of customer values (i.e., segmentation of

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customers in to a plurality of groups based upon certain attributes, column 3, lines 53-58). Further, as seen in above and in the Final rejection, Dietrich et al disclose the use of customer and baseline profiles with a service network model (column 2, lines 42-44), including shipment of goods to a customer (column 3, lines 32-35), wherein the data is analyzed to create customer profiles describing customer service activity and evaluate the incremental cost and resource allocation (i.e., range) of adding new customer to the service network (column 3, lines 57-67), in order to determine the correct price range (i.e., target allocation, column 4, lines 1-3). Further, Dietrich discloses wherein the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values (i.e., a suitable shipping profile presented to the customer, based upon customer data, column 7, lines 7-24). As such, the limitations of the claim are indeed taught.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Bhadra (US 2002/0038224) discloses automatically notifying customers of available higher levels of service.




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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (571) 272-6726. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

adb  
March 15, 2006

  
ANDRE BOYCE  
PATENT EXAMINER  
A.U. 3623